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Message Text

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14
ACTION AF-08

INFO OCT-01 ISO-00 CIAE-00 INR-07 NSAE-00 PM-04 NSC-05

SP-02 SS-15 DHA-02 /044 W
---------- 007934
R 291400Z OCT 76
FM AMCONSUL DURBAN
TO SECSTATE WASHDC 2407
INFO AMEMBASSY PRETORIA
AMCONSUL JOHANNESBURG
AMCONSUL CAPE TOWN

UNCLAS DURBAN 561

E.O.11652: NA
TAGS: PINT SHUM PINS SF
SUBJECT: SMAM SECURITY POLICE ACQUITTED OF MURDERING MDLULI

REF: A) DURBAN 551, B) DURBAN 217

1. SUMMARY: FOUR SOUTH AFRICAN SECURITY POLICE OFFICERS WERE ACQUITTED OCT 28 OF CHARGES THEY HAD MURDERED ALLEGED ANC RECRUITER, JOSEPH MDLULI, WHILE HE WAS IN DETENTION LAST MARCH 19. WHILE FINDING ACCUSED ENTITLED TO ACQUITTAL, THE PRESIDING JUDGE EXPRESSED DOUBTS ABOUT EVIDENCE GIVEN IN POLICE TESTIMONY AND CALLED FOR FURTHER INVESTIGATION BOTH INTO ACTUAL CIRCUMSTANCES OF MDLULI'S DEATH AND SUBSEQUENT TAMPERING WITH MDLULI'S BODY. END SUMMARY

2. TRIAL OF FOUR S.A. SECURITY POLICE OFFICERS (CAPT. VAN ZYL, LT. TAYLOR, AND DETECTIVE SGTS. MAKHANYA AND NGOBESE) TOOK PLACE IN DURBAN FROM OCT 25-28. PROSECUTION'S OPENING STATEMENT AND EVIDENCE (REFTEL A) WAS SUPPORTED BY TWO OTHER MEDICAL SPECIALISTS, DRS. GORDON AND SHAPIRO. BOTH SUPPORTED RESERVATIONS OF GOVERNMENT PATHOLOGIST VAN STRAATEN THAT MDLULI DIED AS RESULT OF FALL ON CHAIR; ALL FOUND HE HAD DIED OF SEVERE NECK INJURY BUT NONE COULD ACCOUNT FOR EXTENSIVE ADDITIONAL INJURIES ON MDLULI'S BODY. DEFENSE ATTORNEY (W. BOOYSEN) BROUGHT NO WITNESSES BUT SIMPLY BASED ARGUMENT ON POLICE
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STATEMENT THAT NONE OF THE FOUR ACCUSED OFFICERS WERE PHYSICALLY

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PRESENT WITH MDLULI WHEN HE DIED AT ABOUT 9:00 P.M. AS THEY HAD LEFT THE ROOM ABOUT AN HOUR BEFORE. DEFENSE HELD IT "HIGHLY IMPROBABLE THAT A CONSPIRACY WAS LAUNCHED INVOLVING ALL THE POLICE, EVEN THOSE HAVING NOTHING DIRECTLY TO DO WITH THE CASE."

3. TRIAL JUDGE, NATAL JUDGE PRESIDENT JUSTICE JAMES, CLEARLY WAS NOT CONTENT WITH OUTCOME. HE STATED: "ON THE EVIDENCE BEFORE THE COURT I WAS NOT SATISFIED THAT THE FOUR ACCUSED WERE DIRECTLY INVOLVED BUT MEDICAL EVIDENCE CASTS GRAVE DOUBTS ON THE EVIDENCE OF THE POLICEMEN WHO GAVE EVIDENCE FOR THE STATE." HE ADDED, "IF POLICE EVIDENCE WERE TO BE ACCEPTED AT ITS FACE VALUE", THEN THE MORNING FRACAS BETWEEN THE ACCUSED OFFICERS AND MDLULI COULD NOT BE SHOWN TO BE THE CAUSE OF HIS DEATH. JUSTICE JAMES SAID THE COURT COULD NOT ACCEPT EITHER THAT A "CONSPIRACY OF SILENCE" WAS ENTERED INTO BY THE POLICE; HE REGARDED THIS AS TOO ELABORATE AND DIFFICULT TO ACCOMPLISH. THEREFORE, "WHATEVER VIEW ONE MIGHT TAKE OF WHAT OCCURRED", HE FOUND THOSE SPECIFICALLY ACCUSED ENTITLED TO ACQUITTAL. JUSTICE JAMES CONCLUDED, HOWEVER, THAT THE ACCOUNTS GIVEN DID NOT ADEQUATELY EXPLAIN EITHER MDLULI'S DEATH OR HIS NUMEROUS OTHER INJURIES. HE CALLED FOR FURTHER INVESTIGATIONS TO DETERMINE THE TRUTH.

4. CURIOUS ASPECT OF TRIAL AROSE WHEN DEFENSE ATTORNEY BOOYSEN, CROSS-EXAMINING GOVERNMENT PATHOLOGIST, SHOWED LATTER COLOR PHOTOS OF MDLULI'S BODY AND ASKED IF THEY HAD BEEN TAMPERED WITH. (PHOTOS WERE THOSE PUBLISHED BY OVERSEASPRESS INTO WHOSE HANDS THEY APPARENTLY WERE CONVEYED BY ANTI-SAG ELEMENTS (REF B). VAN STRAATEN CONFIRMED THAT PHOTOGRAPHS NOT ONLY DIFFERED FROM ONES TAKEN IN HIS PRESENCE DURING POST MORTEM BUT THAT THEY SHOWED INJURIES NOT ON MDLULI'S BODY AT THE TIME OF HIS DEATH. EXISTING INJURIES HAD ALSO BEEN TAMPERED WITH IN LATER PHOTOS, VAN STRAATEN TESTIFIED. JUSTICE JAMES NOTED THAT THE COURT HAD NOT LEARNED WHY ADDITIONAL INJURIES WERE INFLICTED ON MDLULI'S BODY AFTER IT HAD BEEN RELEASED TO THE FAMILY OR WHY ADDITIONAL PHOTOS WERE TAKEN; HE CALLED FOR FURTHER INVESTIGATION OF THIS MATTER ALSO.

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5. COMMENT SEPTEL.
FARBER

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